



January 8, 2001

Ms. Kristi LaRoe
Assistant District Attorney
Tarrant County
401 West Belknap
Fort Worth, Texas 76196-0201

OR2001-0053

Dear Ms. LaRoe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142996.

The Tarrant County District Attorney's Office (the "office") received a request for information relating to the Tarrant County Narcotics Intelligence and Coordination Unit (TCNICU) including correspondence concerning the conduct of a specified officer and correspondence relating to the termination of the North Richland Hills Police Department's participation in TCNICU. Because you have not submitted correspondence concerning the specified officer, we assume that you have released this information. *See* Gov't Code § 552.301(a) (providing that a governmental body must ask this office for a decision in order to withhold requested information). You claim that the submitted information is excepted from disclosure under sections 552.108 and 552.111 the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 provides in pertinent part as follows:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(b)(1). This office has stated that certain procedural information may be withheld under section 552.108 of the Government Code, or its statutory predecessors. *See, e.g.,* Open Records Decision Nos. 531 (1989) (detailed use of force

guidelines), 456 (1987) (forms indicating location of off-duty police officers), 413 (1984) (security measures to be used at next execution), 143 (1976) (specific operations or specialized equipment directly related to investigation or detection of crime). To claim this aspect of section 552.108 protection, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision No. 562 at 10 (1990). Further, commonly known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common law rules, and constitutional limitations on use of force are not protected under section 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known with law enforcement and crime prevention).

You explain that TCNICU is an interjurisdictional task force that coordinates narcotics investigations among agencies in Tarrant County. You assert that release of the submitted information would interfere with TCNICU's ability to investigate crime by revealing investigatory strategies, methodologies, and priorities. After reviewing the submitted information, we agree that the case log and the operations policy may be withheld under section 552.108(b)(1).

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publishing Company v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic information, you may withhold the marked information from disclosure based on section 552.108(b)(1). However, we believe that the remaining submitted information may not be withheld under section 552.108(b)(1).

You also assert section 552.111 of the Government Code. Section 552.111 excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.—Austin 1992, no writ); Open Records Decision No. 615 at 5 (1993). The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.—San Antonio 1982, writ ref'd n.r.e.) (emphasis added). However, an agency's policymaking functions do not encompass internal administrative or personnel matters, as disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *See City of Garland v. Dallas Morning News*, 22 S.W.3d 351 (Tex. 2000); *Lett v. Klein Indep. Sch. Dist.*, 917 S.W.2d 455 (Tex. App.—Houston [14th Dist.] 1996, writ denied) (records relating to problems with specific

employee do not relate to making of new policy but merely implement existing policy); Open Records Decision No. 615 at 5-6 (1993). *But see* Open Records Decision No. 631 (1995) (finding personnel matters of a broader scope were excepted from disclosure under section 552.111).

After reviewing the submitted information, we conclude that portions of the submitted information contain advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. We have marked the information that you may withhold under section 552.111 of the Government Code. However, the remaining submitted information contains purely factual information which you may not withhold under section 552.111.

In conclusion, you may withhold the case log and the operations policy under section 552.108(b)(1) and the marked information under section 552.111. You must release the remaining submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

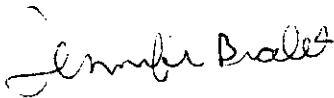
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/er

Ref: ID# 142996

Encl: Submitted documents

cc: Mr. Tom Carse
12800 Hillcrest Road, Suite 215
Dallas, Texas 75230
(w/o enclosures)